



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

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Application of Southern California Edison)
Company (U 338-E) for Order Approving)
Settlement Agreement Between Southern)
California Edison Company and Bonneville)
Power Administration)

Application No. 06-07-~~A0607005~~
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APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)
FOR ORDER APPROVING SETTLEMENT AGREEMENT BETWEEN
SOUTHERN CALIFORNIA EDISON COMPANY AND
BONNEVILLE POWER ADMINISTRATION

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Dated: **July 5, 2006**

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I.

INTRODUCTION

Pursuant to Sections 701, 761, and 2821 of the California Public Utilities Code, Rule 15 of the Rules of Practice and Procedure of the Commission (Commission's Rules), and prior decisions, orders, and resolutions of the Commission, Southern California Edison Company (U 338-E) (SCE) seeks approval by the California Public Utilities Commission (Commission) of a Settlement Agreement between SCE and Bonneville Power Administration (BPA), dated June 5, 2006 (Settlement Agreement). SCE requests the Commission's expedited, *ex parte* approval of the Settlement Agreement, which resolves two disputes that have arisen between SCE and BPA under a twenty-year sale and exchange agreement (referred to as "the Contract") the parties entered into in 1988. The Contract, the two disputes, and the negotiations leading to the Settlement Agreement are described in the accompanying Prepared Testimony of Kevin Cini and its attachments.

II.

SUMMARY OF THE DISPUTES

Under the terms of the Contract, which was a “take or pay” agreement, BPA either sold power to SCE or exchanged power with SCE. In the sale mode, which was the default mode, SCE bought power from BPA at a price determined by a formula that was set forth in the Contract. In the exchange mode, SCE paid for the capacity and energy provided by BPA by returning power to BPA.

As a result of the Settlement Agreement, SCE and BPA have agreed to resolve two disputes in which SCE alleged that BPA violated certain terms of the Contract. In the first dispute, called the Conversion Dispute, SCE filed a complaint in December 2002 in the Court of Federal Claims alleging that from 1991 until 1999, BPA breached material terms of the Contract when it became aware of facts that should have required it to convert the Contract from the sale mode to the exchange mode, actively concealed such facts from SCE, and misinformed SCE of its actions. It thus lulled SCE into a false belief that BPA was complying with the Contract and that, barring substantial changes in water conditions, the Contract would continue in the sale mode in 2000. SCE, believing the Contract would be in the sale mode, could not plan properly for BPA’s unexpected conversion of the Contract to the exchange mode in August 2000. As a result, in 2000 and 2001, with power prices at historic highs, SCE unexpectedly had to purchase large amounts of power at a very high cost both to replace power SCE should have received from BPA at the contract price in the sale mode, and also to make the returns to BPA that were required in the exchange mode for energy and capacity SCE had received from BPA. SCE filed a claim with BPA alleging that BPA’s unexpected conversion of the Contract to the exchange mode had damaged SCE substantially. Following BPA’s denial of SCE’s claim, SCE filed its action in the Court of Federal Claims.

In the second dispute, called the Termination Dispute, SCE filed a complaint in November 2004 in the Court of Federal Claims alleging that BPA wrongfully terminated the Contract in July 2001 following a disagreement with SCE over SCE’s return of energy to BPA

while the Contract was in the exchange mode earlier in 2001. Following BPA's conversion of the Contract to the exchange mode in August 2000, SCE was required to return energy that BPA supplied to SCE. Beginning in September 2000 and continuing through July 2001, a series of transmission outages, capacity reductions, and emergencies related to the California energy crisis reduced SCE's ability to return power to BPA and caused SCE to invoke the clause of the Contract allowing deliveries of return energy to be reduced and/or delayed to avoid placing the continuity of service to SCE's customers in jeopardy. BPA refused to accept SCE's invocation of this Contract clause and demanded that SCE return all energy due by a date certain. Because of the emergency circumstances SCE faced, it could not commit to returning the energy by a specific date. Nevertheless, SCE completed all energy returns by June 2001, as acknowledged in an e-mail from BPA dated June 21, 2001. In the meantime, BPA had asserted that SCE's delay in returning energy constituted a repudiation of the Contract, and demanded that SCE sign a "revised" contract and pay BPA \$9.3 million in damages. On June 1, 2001, BPA suspended further deliveries of power under the Contract. In subsequent correspondence, SCE offered terms for amending the contract, but the parties were not able to resolve their differences. In a letter dated July 3, 2001, BPA informed SCE that it would no longer perform under the Contract. Because the then-controlling case law indicated that SCE had to file an appeal from BPA's decision to the United States Court of Appeals for the Ninth Circuit, SCE did so. When the law was clarified, SCE filed a claim with BPA, which BPA denied. SCE then filed a complaint in the Court of Federal Claims on November 30, 2004.

In February 2005, SCE officers suggested to their BPA counterparts that the disputes be mediated. After the parties agreed on a mediator, they conducted a two-day mediation in Seattle, Washington on June 13 and 14, 2005. The matters were not resolved during the mediation, but shortly thereafter the parties reached a tentative agreement of both disputes, and spent the next several months working out the details. SCE and BPA have now resolved these two disputes in the Settlement Agreement, executed on June 5, 2006.

Under the Settlement Agreement, BPA has agreed to pay SCE \$28.5 million, plus interest. BPA will pay the settlement amount when the “California Refund Process” before the FERC reaches a final determination regarding whether BPA is owed money or it owes money to others due to its role as a seller of power in the California wholesale electricity market during the 2000-2001 energy crisis. The Settlement Agreement is also subject to formal approval by both BPA and this Commission. SCE proposes that upon Commission approval of the Settlement Agreement and receipt of the settlement amount from BPA, SCE will credit the entire \$28.5 million settlement amount, plus interest, to the Energy Resource Recovery Account (ERRA), to be distributed to SCE’s ratepayers in an appropriate ERRA or other ratemaking proceeding.

III.

THE SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED

The Commission will approve a settlement that is “reasonable in light of the whole record, consistent with law, and in the public interest.”¹ In making this determination, the Commission considers the following issues:

1. Does the settlement reflect the relative risks and costs of litigation?
2. Does the settlement fairly and reasonably resolve the disputed issues and conserve public and private resources?
3. Do the settlement terms fall well within the range of possible outcomes if the Parties litigated the dispute?
4. Had the litigation progressed to the stage where the Parties had ample opportunity to assess the relative strengths and weaknesses of their positions so that the dispute was ripe for a reasonable compromise?
5. Were the negotiations at arm’s length and without collusion?
6. Were the Parties adequately represented?²

¹ Commission’s Rules of Practice and Procedure, Rule 51.1(e).

The Prepared Testimony of Kevin Cini and accompanying attachments demonstrate that the Settlement Agreement satisfies each of these criteria. For example:

1. If these cases were to go to trial, the two sides would present conflicting evidence reflecting two very different perspectives of their respective behavior and its impact on the other party. The process of pre-trial discovery, preparation for trial, presentation of their cases at trial and the pursuit of probable appeals would be lengthy and would consume the time and resources of various SCE and BPA personnel at all levels. Throughout the process, neither side would be able to predict with confidence that the trial and appellate courts would rule in its favor. The Settlement Agreement allows both sides to avoid these costs and risks.
2. In light of the risks and costs of proceeding with the trials, the Settlement Agreement fairly and reasonably resolves the disputed issues and conserves public and private resources.
3. The settlement amount falls within the mid-range of potential outcomes estimated by SCE. That view is supported by the view of the neutral mediator selected by the parties who presided at the June 13-14, 2005 mediation sessions in Seattle. He believes the settlement terms fall well within the range of reasonable outcomes if the parties were to proceed with litigation.
4. The two cases had proceeded far enough into the pre-trial stage for the parties to have ample opportunity to assess the relative strengths and weaknesses of their positions so that the disputes were ripe for reasonable compromise.
5. Given the vigor of the disputes between the parties and the strength of their respective representation, the negotiations between them were clearly conducted at arm's length and without collusion.

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² D.05-07-018, *mimeo*, pp. 4-5, citing D.96-05-070, *mimeo*, p. 5, 66 Cal.P.U.C.2d 314, 317 (1996), *see also* D.96-12-082, *mimeo*, at 9, 70 CPUC 427, 430 (1996), and *Re Pacific Gas and Electric Company*, D.88-12-083, 30 CPUC2d 189, 222.

6. The parties were both represented by strong and able counsel.

IV.

REQUEST FOR EXPEDITED AND *EX PARTE* TREATMENT

Rule 15(d) requires that:

Applications for ex parte action shall set forth the basis for such request, and those seeking the granting of relief pending full hearing shall set forth the necessity for such relief.

The Settlement Agreement is subject to the condition that SCE must file an application for approval of the Settlement Agreement within 30 days of execution, and that within 18 months of SCE filing the application, the Commission must issue a decision that approves the Settlement Agreement in its entirety, and that is final and no longer subject to review. If the Commission issues such a decision within the 18-month period, this condition will be satisfied. In addition, within 30 days of execution, BPA is to give 30 days' notice of the Settlement Agreement to interested parties in the Pacific Northwest. The notice may be extended for an additional 30 days, and for an additional time, up to 30 days, to permit BPA to respond to questions. If within 30 days of the end of the notice period BPA notifies SCE that it will proceed, the BPA approval condition will be met.

It is important for the parties to put behind them the contentious and burdensome disputes that are the subject of this Application so they may pursue their historic business relationship that has been of very substantial benefit to both parties and to their customers. Allowing for further delay in the resolution of these disputes only increases the uncertainty as to whether the Settlement Agreement will be approved and SCE's ratepayers will realize the benefit of the amount BPA has agreed to pay to resolve the disputes.

The evidentiary exhibits submitted as part of this Application include: (1) confidential unredacted testimony of SCE witness Kevin Cini, (2) public redacted testimony of SCE witness Kevin Cini, and (3) appendices to the redacted and unredacted testimony. SCE agrees that the

exhibits accompanying this Application may be received in the record of this matter by stipulation.

Assuming that no valid protests are received following the filing of this Application (and SCE anticipates none), no reason exists to schedule a hearing. No statute requires such a hearing in this instance.

SCE therefore respectfully requests expedited and *ex parte* approval of this Application based upon the substantial benefit the Settlement Agreement will confer upon SCE's ratepayers, and the need for speedy relief from the costs, burdens and risks of any further litigation of the issues that the Settlement Agreement resolves. Justice will be served if the Commission acts on this Application on an expedited, *ex parte* basis.

V.

STATUTORY AND PROCEDURAL REQUIREMENTS

A. Rule 6 Requirements

Rule 6(a)(1) of the Commission's Rules required that "[a]ny person that files an application after January 1, 1998, shall state in the application the *proposed category* for the proceeding, the *need for hearing*, the *issues to be considered*, and a *proposed schedule*.

1. Proposed Category

Rule 5(c) of the Commission's Rules defines "Ratesetting" proceedings as:

[P]roceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). For purposes of this Article, other proceedings may be categorized as ratesetting, as described in Rule 6.1(c).

Rule 6.1(c) provides that:

When a proceeding does not clearly fit into any of the categories as defined in Rules 5(b) [adjudicatory], 5(c) [ratesetting], and 5(d) [quasi-legislative], the proceeding

will be conducted under the rules applicable to the ratesetting category unless and until the Commission determines that the rules applicable to one of the other categories, or some hybrid of the rules, are best suited to the proceeding.

SCE therefore proposes that the proceeding on this Application be designated as a “ratesetting” proceeding.

2. Need For Hearing

SCE proposes that this application should be considered on an expedited *ex parte* basis without a hearing, as described in Section IV of this Application. SCE does not believe that any factual issues need to be resolved by a hearing and does not believe that any party will oppose the Application.

3. Issues To Be Considered

The only issue to be considered is whether the Settlement Agreement is reasonable in light of the facts submitted herein.

4. Proposed Schedule

Rule 6(e) provides that:

The proposed schedule shall also take into account the number and complexity of issues to be considered, the number of parties expected to participate, the need for and expected duration of hearings, and any other factors that the party wants the assigned Commissioner to weigh in ruling on the scoping memo.

Since the only issue to be determined is whether the Settlement Agreement is reasonable, no other parties are expected to participate, and no hearing is needed, SCE proposes the following schedule for this Application:

July 5, 2006	Application Filed
August 4, 2006	Scoping Memo issued and case submitted to ALJ

September 1, 2006 Proposed Decision
October 5, 2006 Commission Decision

B. Rule 15 Requirements

Rule 15(a) requires that all applications must state:

The exact legal name of each applicant and the location of principal place of business, and if an applicant is a corporation, trust, association, or other organized group, the State under the laws of which such applicant was created or organized.

SCE is a public utility organized under the laws of the State of California. SCE's principal place of business is located at 2244 Walnut Grove Avenue, Rosemead, CA 91770.

In addition, Rule 15(b) requires that the application must state:

The name, title, address and telephone number of the person to whom correspondence or communications in regard to the application are to be addressed. ...

Correspondence and communications regarding this Application should be addressed to:

Robert B. Keeler
Leon Bass
Southern California Edison Company
P.O. Box 800
2244 Walnut Grove Avenue
Rosemead, California 91770
Telephone: (626) 302-4563
Facsimile: (626) 302-1935

Electronic mail should be addressed to:

Case.Admin@SCE.com
Robert.Keeler@SCE.com
Leon.Bass@SCE.com

To obtain a copy of this Application, please contact:

Alejandra Arzola
Southern California Edison Company
P.O. Box 800
2244 Walnut Grove Avenue
Rosemead, California 91770
Telephone: (626) 302-3062
Facsimile: (626) 302-3119

E-mail: Alejandra.Arzola@SCE.com

C. Rule 16

Rule 16 requires that:

If applicant is a domestic corporation, as defined by Section 167 of the Corporations Code, a copy of its current articles of incorporation, certified by the California Secretary of State, shall be annexed to the original of the application, but need not be annexed to copies of the application. ...

A copy of SCE's Restated Articles of Incorporation (Restated Articles), as amended through June 1, 1993, certified by the California Secretary of State and presently in effect, was filed with the Commission on June 15, 1993, in connection with Application No. 93-06-022³ and are incorporated herein by this reference pursuant to Rule 16. A copy of a Certificate of Correction to the Restated Articles, amending Paragraph 5 of Exhibit I to the Restated Articles, as presently in effect, dated June 23, 1997, and certified by the California Secretary of State, was filed with the Commission on September 19, 1997, in connection with Application No. 97-09-038⁴ and is incorporated herein by this reference pursuant to Rule 16.

VI.

DESCRIPTION OF THE EXHIBITS AND APPENDICES TO THIS APPLICATION

SCE's submission in support of this Application includes the following, which is incorporated by reference herein:

1. Testimony of Kevin Cini Supporting Application for Approval of Settlement Agreement with Bonneville Power Administration (Confidential Unredacted Version).

³ Application No. 93-06-022, filed on June 15, 1993, regarding approval of a self-generation deferral agreement.

⁴ Application No. 97-09-038, filed on September 19, 1997, regarding approval of a termination agreement for termination of ISO4 power purchase agreements.

2. Testimony of Kevin Cini Supporting Application for Approval of Settlement Agreement with Bonneville Power Administration (Public Redacted Version).
3. Appendices to the testimony (all appendices are public).

The confidential testimony and the appendices are being provided to the offices of the Commissioners and to selected members of the Commission staff under the provisions of Public Utilities Code § 583. The public version of the testimony and the appendices are being provided to BPA, and will be provided to other parties upon their request.

These documents are sponsored by Kevin Cini, who is a percipient witness familiar with the facts of the case. The qualifications of Mr. Cini appear in Exhibit SCE-2.

VII.

CONCLUSION

WHEREFORE, for the above-stated reasons, SCE urges the Commission to expeditiously approve the terms and conditions of the Settlement Agreement.

Respectfully submitted,

FRANK J. COOLEY
LEON BASS, JR.
ROBERT B. KEELER

/s/

By: Robert B. Keeler

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

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July 5, 2006

VERIFICATION

I am an officer of the applicant corporation herein and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in the foregoing document are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this **5th day of July, 2006**, at Rosemead, California.

/s/

John R. Fielder

President

SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue

Post Office Box 800

Rosemead, California 91770

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) FOR ORDER APPROVING SETTLEMENT AGREEMENT BETWEEN SOUTHERN CALIFORNIA EDISON COMPANY AND BONNEVILLE POWER ADMINISTRATION on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this **5th day of July, 2006**, at Rosemead, California.

/s/
Alejandra Arzola
Project Analyst
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770

Settlement Agreement

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